

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

GERMAN MEJIAS,

Plaintiff,

-v-

**FIRST AMENDED  
COMPLAINT AND  
DEMAND FOR A JURY  
TRIAL**

**11-CV-3298 (JGK) (FM)**

THE CITY OF NEW YORK, New York City Police Department Officer (“P.O.”) KEVIN MARTIN (Shield No. 24921), P.O. JAIME PAYAN (Shield No. 17116), P.O. JOHN DOE 1 through P.O. JOHN DOE 3, and SUPERVISORY OFFICER RICHARD ROE (the names John Doe and Richard Roe being fictitious, as their true names and shield numbers are presently unknown), in their individual and official capacities,

Defendants.

Plaintiff GERMAN MEJIAS, by his attorneys DAVID B. RANKIN and ROBERT M. QUACKENBUSH of the Law Office of Rankin and Taylor, as and for his first amended complaint, does hereby state and allege:

**PRELIMINARY STATEMENT**

1. This is a civil rights action brought to vindicate plaintiff’s rights under the Fourth and Fourteenth Amendments of the Constitution of the United States, through the Civil Rights Act of 1871, as amended, codified as 42 U.S.C. § 1983, and pendant claims through the Constitution and laws of the State of New York.
2. Plaintiff GERMAN MEJIAS’ rights were violated when officers of the New York City Police Department (“NYPD”) unconstitutionally and without any legal basis arrested plaintiff, used unlawful force against him, and caused him to be prosecuted. By reason of

defendants' actions, particularly their unlawful arrest and use of force, plaintiff was deprived of his constitutional, statutory and common law rights.

3. Plaintiff also seeks an award of compensatory and punitive damages and attorneys' fees.

### **JURISDICTION AND VENUE**

4. This Court has subject matter jurisdiction over federal claims pursuant to 28 U.S.C. §§ 1331, 1343 (3-4). This action is brought pursuant to 42 U.S.C. §§ 1983 and 1988 for violations of the Fourth and Fourteenth Amendments to the Constitution of the United States, as well for violations of Article I, §§ 6, 11, and 12 of the Constitution of the State of New York, and the laws of the State of New York.
5. Pursuant to New York State General Obligations Law § 50-G, the plaintiff filed a timely Notice of Claim with the New York City Comptroller on or about July 9, 2010, within ninety (90) days of plaintiff's arrest and defendants' use of force against plaintiff. Plaintiff filed a timely supplemental Notice of Claim on or about April 5, 2011, within ninety (90) days of the dismissal of plaintiff's criminal charges. Accordingly, this Court has supplemental jurisdiction over plaintiff's claims against defendants under the Constitution and laws of the State of New York because they are so related to the within federal claims that they form part of the same case or controversy pursuant to 28 U.S.C. § 1367(a).
6. Venue is proper pursuant to 28 U.S.C. § 1391 in that plaintiff's claim arose in the Southern District of New York.
7. An award of costs and attorneys' fees is authorized pursuant to 42 U.S.C. § 1988.

### **PARTIES**

8. Plaintiff GERMAN MEJIAS is, and was at all times relevant to this action, resident of the County of Bronx in the State of New York.

9. Defendant THE CITY OF NEW YORK (“CITY”) is a municipal entity created and authorized under the laws of the State of New York. It is authorized by law to maintain a police department which acts as its agent in the area of law enforcement and for which it is ultimately responsible. Defendant CITY assumes the risks incidental to the maintenance of a police force, as well as the employment of police officers, as said risks attach to the public consumers of the services provided by NYPD.
10. New York City Police Department Officer (“P.O.”) KEVIN MARTIN (Shield No. 24921), P.O. JAIME PAYAN (Shield No. 17116), P.O. JOHN DOE 1 through P.O. JOHN DOE 3, and SUPERVISORY OFFICER RICHARD ROE (referred to collectively as the “individual defendants”) are and were at all times relevant herein, officers, employees and agents of the NYPD.
11. The individual defendants are being sued herein in their individual and official capacities under both federal law and state law.
12. At all times relevant herein, the individual defendants were acting under color of state law in the course and scope of their duties and functions as agents, servants, employees and officers of NYPD and otherwise performed and engaged in conduct incidental to the performance of their lawful functions in the course of their duties. They were acting for and on behalf of the NYPD at all times relevant herein, with the power and authority vested in them as officers, agents and employees of the NYPD and incidental to the lawful pursuit of their duties as officers, employees and agents of the NYPD.
13. The true names and shield numbers of defendants P.O. JOHN DOE 1 through P.O. JOHN DOE 3 and SUPERVISORY OFFICER ROE are not currently known to the plaintiff.<sup>1</sup>

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<sup>1</sup> By identifying these defendants as “John Doe” and “Richard Roe,” plaintiff is making no representations as to the gender of these defendants.

However, they are employees or agents of the NYPD. Accordingly, they are entitled to representation in this action by the New York City Law Department (“Law Department”) upon their request, pursuant to New York State General Obligations Law § 50-k. The Law Department, then, is hereby put on notice (a) that plaintiff intends to name said officers as defendants in an amended pleading once the true names and shield numbers of said defendants become known to plaintiff and (b) that the Law Department should immediately begin preparing their defense in this action.

### **STATEMENT OF FACTS**

14. The events described herein occurred primarily near the corner of East 187<sup>th</sup> Street and Webster Avenue in Bronx County at approximately 12:40 AM on June 27, 2010.
15. From approximately 10:00 PM to 11:30 PM on June 26, 2010, plaintiff attended a large barbecue in the vicinity of East 188<sup>th</sup> Street and Bathgate Avenue in Bronx County.
16. Around 11:30 PM, plaintiff left the barbecue and walked to his home in the vicinity of East 187<sup>th</sup> Street and Webster Avenue, approximately four (4) blocks from the site of the barbecue.
17. Back at home, plaintiff spent time with his brother and about two (2) of his brother’s friends, playing video games and otherwise having fun with each other.
18. At approximately 12:30 AM that night, plaintiff saw a couple of his friends and others from the barbecue walking past his apartment on the sidewalk along East 187<sup>th</sup> Street.
19. Upon seeing his friends outside, plaintiff stepped out of the apartment to meet them. While doing so, plaintiff was holding a plastic cup of orange juice in his hand.

20. As plaintiff continued walking towards the corner of East 187<sup>th</sup> Street and Webster Avenue to meet his friends, an NYPD van drove up to the vicinity where plaintiff and his friends were talking with each other.
21. Before coming to a stop, a voice coming from the NYPD van's loudspeaker stated, in sum and substance, "CLEAR OUT!"
22. In response, some of the people began complying with the order by starting to walk away from the area.
23. When the NYPD van came to a stop, all of the individual defendants got out of the vehicle.
24. Without provocation or explanation, defendant P.O. MARTIN approached plaintiff and immediately smacked the cup of orange juice out of plaintiff's hand, causing the juice to splash all over plaintiff's light-colored t-shirt.
25. In response, plaintiff immediately placed his hands in the air out of respect for the officers and so the officers did not perceive any threat to officer safety.
26. Plaintiff then stated, in a calm and respectful tone, in sum and substance, "What's happening?"
27. Defendant P.O. MARTIN replied, in sum and substance, "YOU DRINKING?"
28. Plaintiff assumed defendant P.O. MARTIN was referring to alcoholic beverages, so plaintiff truthfully replied he was not drinking.
29. Defendant P.O. MARTIN then looked surprised and even offended at plaintiff's denial, stating, in sum and substance, "YOU PLAYING DUMB WITH ME?" While this was occurring, defendant P.O. PAYAN and other officers were standing nearby and observing the interaction between plaintiff and defendant P.O. MARTIN.

30. Defendant P.O. MARTIN then reached out and grabbed plaintiff's arm or wrist and began pulling it.
31. Defendant P.O. PAYAN saw P.O. MARTIN grab plaintiff and he knew there was no lawful reason to arrest plaintiff, but defendant P.O. PAYAN did nothing to intervene or protect plaintiff from being arrested without cause.
32. In reaction to defendant P.O. MARTIN's conduct, plaintiff asked, in sum and substance, "WHY AM I BEING ARRESTED?"
33. Defendant P.O. MARTIN did not tell plaintiff why he was being arrested and, even though plaintiff was not physically resisting in any way, loudly stated, in sum and substance, "YOU RESISTING ARREST NOW?"
34. Plaintiff was surprised at this question and replied, in sum and substance, "No, just trying to figure out what's going on."
35. In response, defendant P.O. MARTIN yelled towards the other officers, "HE'S RESISTING!"
36. Upon information and belief, defendant P.O. MARTIN yelled "HE'S RESISTING" in order to encourage the other officers to come help him beat the plaintiff.
37. Accordingly, defendants P.O. MARTIN, P.O. PAYAN and the other individual defendants then pounced on the plaintiff and began beating him about the head, back, and legs with their fists and nightsticks.
38. Defendants' use of the nightstick to beat the back of plaintiff's legs predictably caused plaintiff to fall to the pavement knees-first.
39. Once on his knees, the officers continued beating plaintiff about his head and back, forcing plaintiff face towards the pavement.

40. Plaintiff was compliant at all times described herein, but, despite that, defendant P.O. MARTIN sadistically grabbed plaintiff by the back of his head and slammed plaintiff's head into the pavement.
41. By this time, a crowd of civilians had begun to crowd around the individual defendants beating pummeling the plaintiff.
42. Soon thereafter, the officers rear-cuffed plaintiff.
43. Eventually, defendant P.O. MARTIN and the other individual defendants picked plaintiff up and off the pavement, and they loaded him into the NYPD van.
44. While plaintiff was sitting in the back of the NYPD van, defendant P.O. MARTIN told him, in sum and substance, "YOU MY BITCH NOW."
45. Plaintiff responded to this threat by stating, in sum and substance, "I didn't know you officers are like that."
46. Defendant P.O. MARTIN responded with another threat, telling plaintiff, in sum and substance, "IF YOU SAY ANOTHER WORD, I'M GOING TO COME BACK THERE."
47. Soon thereafter, the officers drove plaintiff to the NYPD's 46<sup>th</sup> Precinct, located at 2120 Ryer Avenue in Bronx County, arriving shortly before 1:00 AM.
48. The officers took photographs and fingerprints from the plaintiff, and then they put him in a cell.
49. While in the cell, plaintiff continued bleeding and feeling dizzy due to the beating on the street.
50. Accordingly, the officers took plaintiff to North Bronx Central Hospital located at 3424 Kossuth Avenue in Bronx County.

51. At the hospital, a doctor treated plaintiff's injuries by cleaning his wounds and patching him up. Specifically, the medical staff treated the injuries which caused bleeding on plaintiff's right elbow, bleeding from the right side of the face, and bleeding from his knee.
52. After receiving treatment at the hospital, the officers brought plaintiff back to the precinct.
53. From the precinct, the officers then took plaintiff to Central Booking, arriving at approximately 9:30 AM later that morning.
54. At approximately 5:30 PM, plaintiff was brought before the criminal court judge.
55. Based upon knowingly false allegations sworn to by defendant P.O. MARTIN, plaintiff was charged on docket number 2010-BX-040739, with N.Y.P.L. §§ 205.30 and 240.20(6), resisting arrest and disorderly conduct.
56. Specifically, defendant P.O. MARTIN swore to the following accusations, despite knowing them to be untrue:

Deponent states that, at the above time and place, a public street, he was responding to a radio run for officer's [sic] needing assistance at the above location. Deponent further states that he observed a large group of individuals in the area and was instructing said individuals to disperse. Deponent further state that he observed [plaintiff] standing with a drink of an alcoholic beverage in his hand, and asked [plaintiff] to disperse.

Deponent further states that [plaintiff] did not leave the location and leaned against the wall and continued to drink from said alcoholic beverage. Deponent further states that he asked [plaintiff] why he wasn't moving and plaintiff stated in sum and substance: BECAUSE I DON'T HAVE TO.

Deponent further states that he requested identification from [plaintiff] in order to issue a summons for the aforementioned conduct and defendant stated in sum and substance: NO. Deponent further states that he observed [plaintiff] move his hands to [plaintiff]'s waistband and instructed [plaintiff] to move his hands away from said waistband and [plaintiff] stated in sum and substance: NO. Deponent further states that he went to move [plaintiff]'s hands and [plaintiff] pushed deponent's hands away and pushed deponent in the shoulder and began to walk away.



Deponent further states that he went to arrest [plaintiff] for the aforementioned conduct [plaintiff] contorted his body and placed his arms in front of his chest to avoid being placed in handcuffs. Deponent further states that as officers attempted to place handcuffs on [plaintiff] [plaintiff] kicked his legs and moved his body.

57. Despite defendant P.O. MARTIN's sworn allegations that plaintiff was drinking an alcoholic beverage and had pushed the officer in the shoulder, plaintiff was not charged with any alcohol-related offense or assault-related offense.

58. The criminal court judge released plaintiff on his own recognizance at approximately 5:45 PM.

59. Accordingly, plaintiff was in defendants' custody for approximately seventeen (17) hours.

60. In addition to his initial appearance in criminal court, plaintiff was forced to appear in court to defend himself on September 29, 2010, November 18, 2010, and February 9, 2011.

61. At the final appearance on this docket on February 9, 2011, the court dismissed the charges against plaintiff in their entirety pursuant to N.Y.C.P.L. § 30.30, the state's speedy trial statute.

**FIRST CLAIM  
DEPRIVATION OF RIGHTS  
UNDER THE UNITED STATES CONSTITUTION THROUGH 42 U.S.C. § 1983**

62. Plaintiff incorporates by reference the allegations set forth in all preceding paragraphs as if fully set forth herein.

63. Defendants, under color of state law, subjected the plaintiff to the foregoing acts and omissions, thereby depriving plaintiff of his rights, privileges and immunities secured by the Fourth and Fourteenth Amendments to the United States Constitution, including, without limitation, deprivation of the following constitutional rights: (a) freedom from unreasonable seizure of his person, including the excessive use of force; (b) freedom from arrest without probable cause; (c) freedom from false imprisonment, meaning wrongful detention without

good faith, reasonable suspicion or legal justification, and of which plaintiff was aware and did not consent; (d) freedom from the lodging of false charges against him by police officers; (e) freedom from having police officers fabricate evidence against him; (f) freedom from malicious prosecution by police, that being prosecution without probable cause that is instituted with malice and that ultimately terminated in plaintiff's favor; (g) freedom from abuse of process; and (h) freedom from deprivation of liberty without due process of law.

64. Defendants' deprivation of plaintiff's constitutional rights resulted in the injuries and damages set forth above.

**SECOND CLAIM**  
**SUPERVISORY LIABILITY FOR DEPRIVATION OF RIGHTS**  
**UNDER THE UNITED STATES CONSTITUTION THROUGH 42 U.S.C. § 1983**

65. Plaintiff incorporates by reference the allegations set forth in all preceding paragraphs as if fully set forth herein.

66. By failing to remedy the wrongs committed by his or her subordinates, in failing to properly train, screen, supervise, or discipline his or her subordinates, and by personally participating in the constitutional injuries set forth above, SUPERVISORY OFFICER ROE caused damage and injury in violation of plaintiff's rights guaranteed under the United States Constitution, including its Fourth and Fourteenth Amendments, through 42 U.S.C. §1983.

67. As a result of the foregoing, plaintiff was deprived of his liberty, suffered specific and serious bodily injury, pain and suffering, psychological and emotional injury, costs and expenses, and was otherwise damaged and injured.

**THIRD CLAIM**  
**FAILURE TO INTERVENE – FOURTH AMENDMENT – 42 U.S.C. § 1983**

68. Plaintiff incorporates by reference the allegations set forth in all preceding paragraphs as if fully set forth herein.

69. Members of the NYPD have an affirmative duty to assess the constitutionality of interactions between their fellow members of service and civilians and to intervene where they observe another member of the Police Department or other law enforcement agency employing unjustified and excessive force against a civilian or falsely arresting a civilian.
70. Defendants P.O. PAYAN, P.O. DOE 1 through P.O. DOE 3, and SUPERVISORY OFFICER ROE were present for the above-described incident and witnessed defendant P.O. MARTIN unlawfully arrest the plaintiff.
71. Defendants' use of force against plaintiff was obviously excessive and unjustified under the circumstances yet defendants P.O. DOE 3, P.O. DOE 4, and SUPERVISORY OFFICER ROE failed to take any action or make any effort to intervene, halt or protect the plaintiff from being subjected to excessive force by other individual defendants.
72. The arrest of plaintiff and the initiation of criminal charges against him was clearly without probable cause or other legal justification, and was based on facts alleged by defendant P.O. MARTIN which the other individual defendants knew to be false, yet defendant the other individual defendants failed to take any action or make any effort to intervene, halt or protect plaintiff from being unlawfully and wrongfully arrested and prosecuted.
73. Defendants' violations of plaintiff's constitutional rights by failing to intervene in other defendants' clearly unconstitutional use of force and plaintiff's unconstitutional arrest and prosecution resulted in the injuries and damages set forth above.

**FOURTH CLAIM**  
**MONELL CLAIM AGAINST DEFENDANT CITY – 42 U.S.C. § 1983**

74. Plaintiff incorporates by reference the allegations set forth in all preceding paragraphs as if fully set forth herein.

75. All of the acts and omissions by the named and unnamed individual police officer defendants described above were carried out pursuant to overlapping policies and practices of the CITY which were in existence at the time of the conduct alleged herein and were engaged in with the full knowledge, consent, and cooperation and under the supervisory authority of the defendant CITY and its agency, the NYPD.
76. Defendant CITY and the NYPD, by their policy-making agents, servants and employees, authorized, sanctioned and/or ratified the individual police defendants' wrongful acts; and/or failed to prevent or stop those acts; and/or allowed or encouraged those acts to continue.
77. The acts complained of were carried out by the aforementioned individual defendants in their capacities as police officers and officials pursuant to customs, policies, usages, practices, procedures and rules of the CITY and the NYPD, all under the supervision of ranking officers of the NYPD.
78. The aforementioned customs, practices, procedures and rules of the CITY and the NYPD include, but are not limited to, the following unconstitutional practices:
- a. Arresting persons known to be innocent in order to meet "productivity goals" (i.e., arrest quotas);
  - b. Falsely swearing out criminal complaints, and/or lying and committing perjury during sworn testimony in order to protect other officers; and/or in order to meet said productivity goals; and
  - c. Discouraging police officers from reporting the corrupt or unlawful acts of other police officers and retaliating against officers who report police misconduct; and
  - d. Failing to intervene to prevent the above-mentioned practices when they reasonably could have been prevented by a supervisor or other agent or employee of the NYPD.
79. The existence of aforesaid unconstitutional customs and policies may be inferred from repeated occurrences of similar wrongful conduct, as documented in the following civil rights actions filed against the CITY:

- a. Schoolcraft v. City of New York, 10-CV-6005 (RWS) (S.D.N.Y.) (police officer who exposed a precinct's policies and practices of illegal quotas for the issuance of summonses and arrests, falsifying evidence and suborning perjury alleges he was arrested and committed to a psychiatric facility in retaliation for exposing said policies and practices to the press);
- b. Long v. City of New York, 09-CV-6099 (AKH) (S.D.N.Y.); People v. Pogan, 06416-2008 (Sup. Ct., N.Y. Co.) (officer who purposefully swore out a false complaint and used excessive force is convicted of falsifying police records and was prosecuted for recklessly using physical force; the plaintiff was engaged in expressive conduct, to wit, riding in a Critical Mass bicycle ride, when he was assaulted by the officer);
- c. Taylor-Mickens v. City of New York, 09-CV-7923 (RWS) (S.D.N.Y.) (police officers at the 24<sup>th</sup> Precinct issue four summonses to a woman in retaliation for her lodging a complaint with the Civilian Complaint Review Board at the precinct);
- d. Lin v. City of New York, 09-CV-1936 (PGG) (S.D.N.Y.) (officers arrest person lawfully photographing an arrest of a bicyclist in Times Square and swear out a criminal complaint whose facts are contradicted by video evidence; officers also arrest a bystander after refusing an unlawful order to produce identification);<sup>2</sup>
- e. Colon v. City of New York, 09-CV-0008 (E.D.N.Y.) In an Order dated November 25, 2009, which denied the CITY's motion to dismiss on Iqbal/Twombly grounds, wherein the police officers at issue were fired and prosecuted for falsifying evidence in a purported buy-and-bust operation, the Honorable District Court Judge Weinstein wrote:

Informal inquiry by the court and among the judges of this court, as well as knowledge of cases in other federal and state courts, has revealed anecdotal evidence of repeated, widespread falsification by arresting police officer of the New York City Police Department. Despite numerous inquiries by commissions and strong reported efforts by the present administration – through selection of candidates for the police force stressing academic and other qualifications, serious training to avoid constitutional violations, and strong disciplinary action within the department – there is some evidence of an attitude among officers that is sufficiently widespread to constitute a custom or policy by the city approving illegal conduct of the kind now charged.

- f. Bryant v. City of New York, 22011/2007 (Sup. Ct., Kings Co.) (jury declares that NYPD officers acted pursuant to a City policy regarding the number of arrests

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<sup>2</sup> For a description of this case and settlement, *see*, Anahad O'Connor, *City Pays \$98,000 to Critical Mass Cyclists*, N.Y. Times, March 30, 2010, *available at* <http://cityroom.blogs.nytimes.com/2010/03/30/city-pays-98000-to-critical-mass-cyclists/>.

officers were expected to make that violated plaintiff's constitutional rights and contributed to her arrest);<sup>3</sup>

- g. Callaghan v. City of New York, 07-CV-9611 (PKC) (S.D.N.Y.) (officers accused of falsifying evidence and retaliatory arrests of bicyclists engaged in expressive conduct, to wit, riding in Critical Mass bicycle rides after the 2004 Republican National Convention);<sup>4</sup>
- h. Dunlop v. City of New York, 06-CV-0433 (RJS), 2008 U.S. Dist. LEXIS 38250 (S.D.N.Y.) (bystander arrested outside the 2004 Republican National Convention while observing arrests occurring in public; alleges that police destroyed exculpatory evidence by deleting portions of a video which contradict sworn criminal complaint);
- i. MacNamara v. City of New York, 04-CV-9216 (RJS) (JCF) (S.D.N.Y.) (evidence of perjured sworn statements systematically provided by officers to attempt to cover-up or justify unlawful mass arrests of approximately 1800 people has been and continues to be developed in the consolidated litigation arising out of the 2004 Republican National Convention);
- j. McMillan v. City of New York, 04-CV-3990 (FB) (RML) (E.D.N.Y.) (officers fabricated evidence and used excessive force against an African-American man in Kings County and initiated drug charges against him, despite an absence of any quantum of suspicion);
- k. Avent v. City of New York, 04-CV-2451 (CBA) (CLP) (E.D.N.Y.) (same);
- l. Smith v. City of New York, 04-CV-1045 (RRM) (JMA) (E.D.N.Y.) (same);
- m. Powers v. City of New York, 04-CV-2246 (NGG), 2007 U.S. Dist. LEXIS 27704 (E.D.N.Y.) (police officer alleges unlawful retaliation by other police officers after testifying about corruption within the NYPD);
- n. Nonnemann v. City of New York, 02-CV-10131 (JSR) (AJP), 2004 U.S. Dist. LEXIS 8966 (S.D.N.Y.) (former NYPD lieutenant alleging retaliatory demotion and early retirement after reporting a fellow officer to IAB and CCRB for the officer's suspicionless, racially-motivated stop-and-frisk of a group of Hispanic youth);
- o. Richardson v. City of New York, 02-CV-3651 (JG) (CLP) (E.D.N.Y.) (officers fabricated evidence, including knowingly false sworn complaints, and used excessive

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<sup>3</sup> For a description of this case and ultimate settlement, see, Oren Yaniv, *Court rules that cops do use quotas, woman injured in 2006 arrest settles for \$75,000*, N.Y. Daily News, Feb. 19, 2011, available at [http://www.nydailynews.com/news/ny\\_crime/2011/02/19/2011-02-19\\_court\\_rules\\_that\\_cops\\_do\\_use\\_quotas\\_woman\\_injured\\_in\\_2006\\_arrest\\_settles\\_for\\_750.html](http://www.nydailynews.com/news/ny_crime/2011/02/19/2011-02-19_court_rules_that_cops_do_use_quotas_woman_injured_in_2006_arrest_settles_for_750.html).

<sup>4</sup> For a description of this case and the nearly \$1 million settlement, see, Cate Doty, *Bike Riders in New York Win Settlement*, N.Y. Times, October 18, 2010, available at [http://www.nytimes.com/2010/10/19/nyregion/19critical.html?\\_r=1](http://www.nytimes.com/2010/10/19/nyregion/19critical.html?_r=1).

force against an African-American man in Kings County and initiated drug charges against him, despite an absence of any quantum of suspicion);

- p. Barry v. New York City Police Department, 01-CV-10627 \*2 (CBM), 2004 U.S. LEXIS 5951 (S.D.N.Y.) (triable issue of fact where NYPD sergeant alleged retaliatory demotion and disciplinary charges in response to sergeant's allegations of corruption within her unit and alleged that the NYPD had an "unwritten but pervasive custom of punishing officers who speak out about police misconduct and encouraging, if not facilitating, silence among officers");
- q. Taylor v. City of New York, 01-CV-5750 (ILG) (MDG) (E.D.N.Y.) (same as Richardson, except without the excessive force; judge at the criminal trial acquitting Mr. Taylor noted, on the record, that he had "significant doubt" about the truthfulness of the officers who testified);
- r. Walton v. Safir, 99-CV-4430 (AKH), 122 F.Supp.2d 466 (S.D.N.Y. 2000) (factual findings after trial that a 12-year veteran of NYPD was terminated in retaliation for criticizing the racially-motivated policies of the NYPD's Street Crime Unit and for alleging that such policies led to the NYPD shooting death of Amadou Diallo);
- s. White-Ruiz v. City of New York, 93-CV-7233 (DLC) (MHD), 983 F.Supp. 365, 380 (S.D.N.Y. 1997) (holding that the NYPD had an "unwritten policy or practice of encouraging or at least tolerating a pattern of harassment directed at officers who exposed instances of police corruption"); and
- t. Ariza v. City of New York, 93-CV-5287 (CPS), 1996 U.S. Dist. LEXIS 20250 at\*14 (E.D.N.Y.) (police officer alleges retaliatory duty assignments and harassment in response to his allegations about a racially-discriminatory workplace; on motion for summary judgment, the Court held that the police officer had established proof of both a widespread usage of a policy to retaliate against police officers who expose police misconduct and a failure to train in the police department).

80. Furthermore, the existence of the aforesaid unconstitutional customs and policies, **specifically with regard to "productivity goals,"** may be further inferred from the following:

- a. Deputy Commissioner Paul J. Browne has repeatedly admitted that NYPD commanders are permitted to set "productivity goals."<sup>5</sup>
- b. An NYPD transit lieutenant was captured on tape telling officers to make more arrests to meet a captain's order and do more work if they want overtime assignments.

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<sup>5</sup> Jim Hoffer, *NYPD Officer claims pressure to make arrests*, WABC-TV Eyewitness News, March 2, 2010, available at <http://abclocal.go.com/wabc/story?section=news/investigators&id=7305356> ("Police Officers like others who receive compensation are provided productivity goals and they are expected to work").



“All they care about is ... summonses and arrests and 250s,” Lt. Janice Williams said, using police jargon for the NYPD Stop, Question and Frisk reports. She added, “The bottom line is everybody’s individual activity is being looked at.” Later in the recording - made during a roll call in 2010 at Transit District 34 in Coney Island - she said only officers with “good productivity” will get the opportunity to work overtime. She also said Capt. James Sheerin wanted every officer to make at least one arrest per month - up from the previous order of one every three months - because crime had spiked and arrest totals were lower than other transit districts. “He wants everyone to get in the mindset that there’s no more collar a quarter,” Williams said.<sup>6</sup>

- c. NYPD Officer Adil Polanco has asserted that his command, the 41<sup>st</sup> Precinct, regularly requires officer to make at least “one arrest and twenty summonses” per month. P.O. Polanco’s allegations were confirmed by an audiotape obtained by the media. The contents of the tape reveal that these quotas are enforced through coercion and threats of job loss, to wit, a patrol supervisor at the 41<sup>st</sup> Precinct is overheard saying: “If you think one and 20 is breaking your balls, guess what you’ll be doing. You’re gong (sic) to be doing a lot more, a lot more than what they’re saying.” The tape also reveals that another patrol supervisor chimed in and told the officers: “Next week, 25 and one, 35 and one, and until you decide to quit this job and go to work at a Pizza Hut, this is what you’re going to be doing till (sic) then.”<sup>7</sup>
- d. The New York Daily News obtained and published two (2) internal memos which were posted inside the roll-call room at the NYPD’s 77<sup>th</sup> Precinct. The memos specifically instructed officers about “number of tickets to give drivers for cell phone, seat belt, double-parking, bus stop, tinted windows and truck route violations” they were expected to issue. The memos remained posted for several weeks inside the roll-call room until the media began inquiring.<sup>8</sup>
- e. Responding to a query from a civilian who was cited on consecutive days in November of 2009 for allegedly occupying more than one seat on the New York City subway, the officer responded: “Recently we’ve been told to write tickets instead of give warnings for this type of thing.” The officer explained that they needed to meet quotas.<sup>9</sup>

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<sup>6</sup> Rocco Parascandola, *NYPD Lt. Janice Williams captured on tape pushing for more busts, but brass says there’s no quotas*, N.Y. Daily News, March 3, 2011, available at [http://www.nydailynews.com/ny\\_local/2011/03/03/2011-03-03\\_nypd\\_lt\\_janice\\_williams\\_captured\\_on\\_tape\\_pushing\\_for\\_more\\_busts.html](http://www.nydailynews.com/ny_local/2011/03/03/2011-03-03_nypd_lt_janice_williams_captured_on_tape_pushing_for_more_busts.html).

<sup>7</sup> *Id.*

<sup>8</sup> James Fanelli, *Cops at Brooklyn’s crime-ridden 77<sup>th</sup> Precinct told to meet quotas for moving violations, memos say*, N.Y. Daily News, Nov. 8, 2010, available at [http://www.nydailynews.com/ny\\_local/2010/11/08/2010-11-08\\_cops\\_told\\_to\\_meet\\_quotas.html](http://www.nydailynews.com/ny_local/2010/11/08/2010-11-08_cops_told_to_meet_quotas.html).

<sup>9</sup> Tom Namako and Kirsten Fleming, *Nighttime Riders in Big Sit Fit*, The New York Post, December 26, 2009, available at [http://www.nypost.com/p/news/local/space\\_hogs\\_lapped\\_on\\_empty\\_subways\\_m7iRAd9b4E9aYPuGvy5OO](http://www.nypost.com/p/news/local/space_hogs_lapped_on_empty_subways_m7iRAd9b4E9aYPuGvy5OO).



- f. In December of 2010 and in response to the pressure from their supervisors to write baseless summonses pursuant to the policy and practice of “quotas,” police officers at the 79<sup>th</sup> Precinct considered organizing a so-called “daylong summons boycott.” As one (1) officer at the precinct explained, “Nobody feels this is right, asking us to write summonses just to meet a quota.”<sup>10</sup>
- g. In response to the planned summons-boycott at the 79<sup>th</sup> Precinct, on December 13, 2010, Deputy Chief Michael Marino marched into the precinct at roll call with a deputy inspector and read officers the riot act. “Just try it,” a police source quoted Marino as saying. “I’ll come down here and make sure you write them.” Marino also vowed to transfer people, like he did when he was the commanding officer of the 75<sup>th</sup> Precinct in East New York.<sup>11</sup>
- h. Captain Alex Perez, the second in command at the NYPD’s 81<sup>st</sup> Precinct, testified in a civil matter before a Brooklyn Supreme Court jury that officers are likely to get poor performance ratings if they have few arrests, conceding that that arrest numbers are a factor in evaluating an officer’s performance.<sup>12</sup> Ultimately, the jury in that case ruled that the police had a policy “regarding the number of arrests officers were to make that violated plaintiff’s constitutional rights and contributed to her arrest.”<sup>13</sup>
- i. The New York City Office of Collective Bargaining concluded that officers in Brooklyn’s 75<sup>th</sup> Precinct were required to issue four (4) parking tickets, three (3) moving violation citations, three (3) “quality-of-life” summonses, make one (1) arrest and two (2) stop-and-frisks each month. Arbitrator Bonnie Siber Weinstock ruled that the NYPD maintained an illegal “summons quota for traffic violations in the precinct and by penalizing officers for failing to meet the stated number of traffic citations.” She ordered the city to cease and desist from the practice.<sup>14</sup>

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<sup>10</sup> Rocco Parascandola, *Irate cops at 79<sup>th</sup> Precinct in Bedford-Stuyvesant threaten boycott over quotas*, N.Y. Daily News, Dec. 12, 2010, available at [http://www.nydailynews.com/news/ny\\_crime/2010/12/12/2010-12-12\\_bklyn\\_cops\\_threaten\\_tixwriting\\_boycott.html#ixzz180Q0JW7t](http://www.nydailynews.com/news/ny_crime/2010/12/12/2010-12-12_bklyn_cops_threaten_tixwriting_boycott.html#ixzz180Q0JW7t).

<sup>11</sup> Rocco Parascandola, *Deputy Chief Michael Marino threatens cops at the 79<sup>th</sup> Precinct who want to go on summons strike*, N.Y. Daily News, Dec. 15, 2010, available at [http://www.nydailynews.com/ny\\_local/2010/12/15/2010-12-15\\_summons\\_strike\\_i\\_dare\\_ya\\_deputy.html](http://www.nydailynews.com/ny_local/2010/12/15/2010-12-15_summons_strike_i_dare_ya_deputy.html).

<sup>12</sup> William J. Gorta, *Brooklyn Mom’s Suit Targets NYPD Arrest Quotas*, N.Y. Post, Feb. 15, 2011, at 6, available on Westlaw at 2011 WLNR 2986205; see also Oren Yaniv, *Capt. Links Arrests, Evaluation of Cops*, N.Y. Daily News, Feb. 15, 2011, at 20, also available on Westlaw at 2011 WLNR 2986205.

<sup>13</sup> Oren Yaniv, *Court rules that cops do use quotas, woman injured in 2006 arrest settles for \$75,000*, N.Y. Daily News, Feb. 19, 2011, available at [http://www.nydailynews.com/news/ny\\_crime/2011/02/19/2011-02-19\\_court\\_rules\\_that\\_cops\\_do\\_use\\_quotas\\_woman\\_injured\\_in\\_2006\\_arrest\\_settles\\_for\\_750.html](http://www.nydailynews.com/news/ny_crime/2011/02/19/2011-02-19_court_rules_that_cops_do_use_quotas_woman_injured_in_2006_arrest_settles_for_750.html).

<sup>14</sup> *New York City Ticket Quota Confirmed, Denied*, The Newspaper.Com, January 21, 2006, available at <http://www.thenewspaper.com/news/09/914.asp>; see also, Kirsten Cole, *NYPD’s Bogus Little Secret: Parking Ticket Quotas -- Agents Often Caught Citing You For Violations You Didn’t Commit*, WCBSTV.com, August 14, 2007, available at <http://webstv.com/topstories/parking.ticket.blitz.2.246533.html> (referring to the arbitrator’s report).

- j. Kieran Creighton, commander of the NYPD Housing Police Service Area 8 in the northern Bronx, was investigated for ordering officers to make a certain number of arrests each month. According to The New York Daily News:

The incident allegedly occurred in the spring when Creighton ordered at least eight members of an undercover anti-crime team to a meeting in Pelham Bay Park to berate them about an alleged lack of arrests, sources said.

“You can't make the nine collars a month, then we'll all have to go our separate ways,” Creighton told the officers, according to an internal complaint obtained by The News.

Anything less than nine arrests would be a “personal slap in the face,” Creighton allegedly said.

Creighton then told the cops to “finagle” the times of arrests so any overtime was paid for by a federally funded anti-drug program, the complaint alleges.

Unbeknownst to Creighton, one officer had his NYPD radio switched on - so the captain's 10 to 12 minute speech was broadcast to Bronx precincts in Morrisania and Schuylerville and taped by a 911 dispatcher.<sup>15</sup>

81. The existence of the aforesaid unconstitutional customs and practices, **specifically with regard to the failure to supervise, train, instruct and discipline police officers and encouraging their misconduct**, are further evidenced, inter alia, by the following:

- a. The Report of the Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department (“Mollen Commission Report”), dated July 7, 1994, states:

In the face of this problem [of corruption], the [NYPD] allowed its systems for fighting corruption virtually to collapse. It has become more concerned about the bad publicity that corruption disclosures generate than the devastating consequences of corruption itself. As a result, its corruption control minimized, ignored and at times concealed corruption rather than root it out. Such an institutional reluctance to uncover corruption is not surprising. No institution wants its reputations tainted – especially a Department that needs the

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<sup>15</sup> Allison Gendar, *NYPD captain allegedly caught in arrest quota fixing*, The New York Daily News, November 14, 2007, available at [http://www.nydailynews.com/news/ny\\_crime/2007/11/14/2007-11-14\\_nypd\\_captain\\_allegedly\\_caught\\_in\\_arrest\\_-1.html#ixzz0bfpBhRTz](http://www.nydailynews.com/news/ny_crime/2007/11/14/2007-11-14_nypd_captain_allegedly_caught_in_arrest_-1.html#ixzz0bfpBhRTz).

public's confidence and partnership to be effective. A weak and poorly resources anti-corruption apparatus minimizes the likelihood of such taint, embarrassment and potential harm to careers. Thus there is a strong institutional incentive to allow corruption efforts to fray and lose priority – which is exactly what the Commission uncovered. This reluctance manifested itself in every component of the Department's corruption controls from command accountability and supervision, to investigations, police culture, training and recruitment. For at least the past decade, the system designed to protect the Department from corruption minimized the likelihood of uncovering it.<sup>16</sup>

- b. Accordingly, in 1990, the Office of the Special Prosecutor, which investigated charges of police corruption, was abolished.
- c. In response to the Honorable Judge Weinstein's ruling of November 25, 2009 in Colon v. City of New York, 09-CV-00008 (E.D.N.Y.), in which he noted a "widespread... custom or policy by the city approving illegal conduct" such as lying under oath and false swearing, Commissioner KELLY acknowledged, "When it happens, it's not for personal gain. It's more for convenience."<sup>17</sup>
- d. Regarding defendant CITY's tacit condonement and failure to supervise, discipline or provide remedial training when officers engage in excessive force, the Civilian Complaint Review Board is a CITY agency, allegedly independent of the NYPD, that is responsible for investigating and issuing findings on complaints of police abuse and misconduct.<sup>18</sup> When it does, however, Police Commissioner KELLY controls whether the NYPD pursues the matter and he alone has the authority to impose discipline on the subject officer(s). Since 2005, during KELLY's tenure, only one-quarter of officers whom the CCRB found engaged in misconduct received punishment more severe than verbal "instructions." Moreover, the number of CCRB-substantiated cases that the NYPD has simply dropped (i.e., closed without action or discipline) has spiked from less than 4% each year between 2002 and 2006, to 35% in 2007, and approximately 30% in 2008. Alarming, the NYPD has refused to

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<sup>16</sup> Mollen Commission Report, pp. 2-3, available at [http://www.parc.info/client\\_files/Special%20Reports/4%20-%20Mollen%20Commission%20-%20NYPD.pdf](http://www.parc.info/client_files/Special%20Reports/4%20-%20Mollen%20Commission%20-%20NYPD.pdf).

<sup>17</sup> Oren Yaniv and John Marzulli, *Kelly Shrugs Off Judge Who Slammed Cops*, New York Daily News, December 2, 2009, available at [http://www.nydailynews.com/news/ny\\_crime/2009/12/02/2009-12-02\\_kelly\\_shrugs\\_off\\_judge\\_who\\_rips\\_lying\\_cops.html](http://www.nydailynews.com/news/ny_crime/2009/12/02/2009-12-02_kelly_shrugs_off_judge_who_rips_lying_cops.html).

<sup>18</sup> In 2006, out of more than 10,000 allegations that were fully investigated, the CCRB substantiated only 594 (about 6%). In 2007, out of more than 11,000 allegations that were fully investigated, the CCRB substantiated only 507 (about 5%). See, CCRB Jan.-Dec. 2007 Status Report at p. 19, available at [http://www.nyc.gov/html/ccrb/pdf/ccrbann2007\\_A.pdf](http://www.nyc.gov/html/ccrb/pdf/ccrbann2007_A.pdf). Upon information and belief, the low rate of substantiated complaints is due in part to the above-noted de facto policy and/or well-settled and widespread custom and practice in the NYPD whereby officers refuse to report other officers' misconduct or tell false and/or incomplete stories, inter alia, in sworn testimony and statements given to the CCRB, to cover-up civil rights violations perpetrated by themselves or fellow officers, supervisors and/or subordinates.

prosecute 40% of the cases sent to it by the CCRB in 2009.<sup>19</sup> As a result, the percentage of cases where the CCRB found misconduct but where the subject officers were given only verbal instructions or the matter was simply dropped by the NYPD rose to 66% in 2007. Substantiated complaints of excessive force against civilians accounted for more than 10% of the cases that the NYPD dropped in 2007 and account for more than 25% of cases dropped in 2008.<sup>20</sup>

82. The existence of the aforesaid unconstitutional customs and practices, **specifically with regard to the practice or custom of officers lying under oath, falsely swearing out criminal complaints, or otherwise falsifying or fabricating evidence**, are further evidenced, inter alia, by the following:

- a. The Mollen Commission concluded that police perjury and falsification of official records is probably the most common form of police corruption facing the criminal justice system. It concluded:

Regardless of the motives behind police falsifications, what is particularly troublesome about this practice is that it is widely tolerated by corrupt and honest officers alike, as well as their supervisors. Corrupt and honest officers told us that their supervisors knew or should have known about falsified versions of searches and arrests and never questioned them.<sup>21</sup>

[...]

What breeds this tolerance is a deep-rooted perception among many officers of all ranks within the Department that nothing is really wrong with compromising facts to fight crime in the real world. Simply put, despite the devastating consequences of police falsifications, there is a persistent belief among many officers that it is necessary and justifies, even if unlawful. As one dedicated officer put it, police officers often view falsification as, to use his words, “doing God’s work” – doing whatever it takes to get a suspected criminal off the streets. This attitude is so entrenched, especially in high-crime precincts, that when investigators confronted one recently arrested officer with evidence of

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<sup>19</sup> Christine Hauser, *Few Results for Reports of Police Misconduct*, New York Times, October 5, 2009, at A19.

<sup>20</sup> Daily News, *Editorial: City Leaders Must Get Serious About Policing the Police*, August 20, 2008.

<sup>21</sup> Mollen Commission Report, p. 36.

perjury, he asked in disbelief, “What’s wrong with that? They’re guilty.”<sup>22</sup>

- b. In late 2009, a former NYPD officer in the Bronx, Pedro Corniel, was charged with perjury for claiming to have caught a burglar “red-handed,” when, in fact, two other officers had made the arrest and handed the arrest off to Mr. Corniel. The suspect was released.<sup>23</sup> Moreover,

Prosecutors and NYPD Internal Affairs probers have identified as many as two dozen cases in the past year in which cops allegedly made false statements involving routine arrests when the truth would have served them just as well.

That’s a significant increase over previous years, sources said. “In the past, we’d find this happening once or twice a year, and now there are a bunch of them,” said one law-enforcement official.

What has the authorities particularly troubled is that officers historically have lied to cover up more serious corruption, such as the cadre of Brooklyn narcotics cops caught last year stealing drugs from dealers and masking their thievery by filing false reports about what they had seized.

But internal probers are now finding that officers appear willing to take insidious shortcuts and lie on arrest reports when they are processing even routine collars, such as grand larceny, burglaries and robberies, sources told The Post.

Their reasons could range from trying to cut down on paperwork to being lazy when filling out arrest and incident reports.<sup>24</sup>

- c. In 2007, former NYPD Officer Dennis Kim admitted to accepting money and sexual favors from the proprietor of a brothel in Queens County in exchange for protecting that brothel. Mr. Kim was convicted of those offenses. The 109<sup>th</sup> Precinct of the NYPD, which used to be Mr. Kim’s command, is also under investigation by the United States Attorney’s Office for “plant[ing] drugs on suspects and steal[ing] cash during gambling raids.” The 109<sup>th</sup> Precinct is believed to be involved in a practice known as “flaking” wherein police officers plant drugs on suspects in order to bring legitimacy to an arrest. According to Assistant United States Attorney Monica Ryan,

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<sup>22</sup> Mollen Commission Report, pp. 40-41.

<sup>23</sup> Murray Weiss, *NYPD in a Liar Storm*, New York Post, October 26, 2009, available at [http://www.nypost.com/p/news/local/nypd\\_in\\_liar\\_storm\\_qazMBEm3UNJVogv4Ndeqcl](http://www.nypost.com/p/news/local/nypd_in_liar_storm_qazMBEm3UNJVogv4Ndeqcl).

<sup>24</sup> *Id.*

members of the 109<sup>th</sup> Precinct “maintained a small stash of drugs in an Altoids tin for this purpose.”<sup>25</sup>

- d. In December of 2009, two (2) officers from the 81<sup>st</sup> Precinct in Brooklyn arrested and falsely swore out charges against an undercover officer from the Internal Affairs Bureau. As explained in an article in the New York Post:

The officers were snared in a sting by Internal Affairs in December when they were told to keep an eye out for people selling untaxed cigarettes in their precinct.

Some time later, they saw a man hanging out on a corner in the neighborhood and found that he was carrying packs of knock-off smokes.

[Sgt. Raymond] Stukes, 45, and [Officer Hector] Tirado, 30, cuffed him, but then claimed that they had seen him selling the bogus butts to two people, according to sources.

Little did the hapless cops know that the man in their custody was an undercover corruption investigator and that the whole incident was caught on video.

To complete the ruse, the undercover cop was processed at the station house so as to not tip off Stukes and Tirado about the sting...

[P]olice sources said [this action] stem[s] from precinct commanders caving to the pressure of top brass to make themselves look better.

“There’s pressure on the cops from the bosses and they’re getting pressured from headquarters,” a police source told The Post.<sup>26</sup>

The officers were indicted for felony perjury, filing a false report and filing a false instrument.<sup>27</sup>

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<sup>25</sup> John Marzulli, *Claims of Corruption at Queens Precinct Put Crooked Cop’s Sentencing on Hold*, New York Daily News, June 20, 2008, available at [http://www.nydailynews.com/news/ny\\_crime/2008/06/20/2008-06-20\\_claims\\_of\\_corruption\\_at\\_queens\\_precinct.html](http://www.nydailynews.com/news/ny_crime/2008/06/20/2008-06-20_claims_of_corruption_at_queens_precinct.html).

<sup>26</sup> Larry Celona and Tim Perone, *Cops Sting Cops*, N.Y. Post, July 30, 2010, available at [http://www.nypost.com/p/news/local/brooklyn/cops\\_sting\\_cops\\_lyItuTeLdhKWtruJZYsdL](http://www.nypost.com/p/news/local/brooklyn/cops_sting_cops_lyItuTeLdhKWtruJZYsdL).

<sup>27</sup> John Marzulli, *Brooklyn cops charged with barding into sting operation, arresting a fellow officer on bogus charges*, N.Y. Daily News, July 30, 2010, available at [http://www.nydailynews.com/ny\\_local/2010/07/30/2010-07-30\\_brooklyn\\_cops\\_charged\\_with\\_barging\\_into\\_sting\\_operation\\_arresting\\_a\\_fellow\\_offic.html](http://www.nydailynews.com/ny_local/2010/07/30/2010-07-30_brooklyn_cops_charged_with_barging_into_sting_operation_arresting_a_fellow_offic.html).

- e. In early 2010, the CITY recently settled a civil rights lawsuit wherein one Officer Sean Spencer<sup>28</sup> falsely arrested and accused a 41-year old grandmother of prostitution, promising to pay the woman \$35,000. In court documents, Caroline Chen, the attorney representing the CITY in the case, admitted: “Officer Spencer falsely reported to the assistant district attorney that he saw [the plaintiff] beckon to three male passersby and that he was aware that plaintiff was previously arrested for [prostitution] when the plaintiff had never been arrested for this offense.” According to the attorney for the Patrolmen’s Benevolent Association, disciplinary charges against the officer are pending.<sup>29</sup>
- f. Separate grand jury investigations into drug-related police corruption in the Bronx and Manhattan revealed that more than a dozen officers had been breaking into drug dealers’ apartments, stealing and then selling their drugs and perjuring themselves by filing false arrest reports. District attorneys and their assistants interviewed during a four-month investigation by New York Newsday said they believe those two grand jury investigations - in the 46<sup>th</sup> Precinct in the University Heights section of the Bronx and the 34th Precinct - are not isolated instances. They say the investigations reflect a larger, broader problem within the NYPD that its top officials seem unable or unwilling to acknowledge.<sup>30</sup>

83. The existence of the aforesaid unconstitutional customs and practices, **specifically with regard to the practice or custom of discouraging police officers from reporting the corrupt or unlawful practices of other police officers and of retaliating against officers who report misconduct**, are further evidenced, inter alia, by the following:

- a. Former New York County District Attorney Robert Morgenthau has been quoted as acknowledging that, in the NYPD, there is a “code of silence,” or a “code of protection” that exists among officers and that is followed carefully;
- b. In 1985, former NYPD Commissioner Benjamin Ward, testifying before a State Senate Committee, acknowledged the existence of the “code of silence” in the NYPD;

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<sup>28</sup> In sum, the CITY has paid out \$80,000 to settle four (4) federal lawsuits against Officer Sean Spencer. John Marzulli, *City shells out \$35G to grandmother, Monica Gonzalez, busted as hooker*, New York Daily News, January 7, 2010, available at [http://www.nydailynews.com/ny\\_local/2010/01/08/2010-01-08\\_city\\_shells\\_out\\_35g\\_to\\_granny\\_busted\\_as\\_hooker.html](http://www.nydailynews.com/ny_local/2010/01/08/2010-01-08_city_shells_out_35g_to_granny_busted_as_hooker.html).

<sup>29</sup> *Id.*

<sup>30</sup> David Kocieniewski and Leonard Levitt, *When the Finest Go Bad: DAs, others say department overlooks corruption*, New York Newsday, November 18, 1991, at 6.



- c. Former NYPD Commissioner Robert Daly wrote in 1991 that the “blue wall of solidarity with its macho mores and prejudices, its cover-ups and silence, is reinforced every day in every way.”

84. The existence of the above-described unlawful de facto policies and/or well-settled and widespread customs and practices is known to, encouraged and/or condoned by supervisory and policy-making officer and officials of the NYPD and the CITY, including, without limitation, Commissioner Kelly.

85. The actions of the individual police defendants resulted from and were taken pursuant to the above-mentioned de facto policies and/or well-settled and widespread customs and practices of the CITY, which are implemented by members of the NYPD, of engaging in systematic and ubiquitous perjury, both oral and written, to cover-up federal law violations committed against civilians by either themselves or their fellow officers, supervisors and/or subordinates. They do so with the knowledge and approval of their supervisors, commanders and Commissioner Kelly who all: (i) tacitly accept and encourage a code of silence wherein police officers refuse to report other officers’ misconduct or tell false and/or incomplete stories, inter alia, in sworn testimony, official reports, in statements to the CCRB and the Internal Affairs Bureau (“IAB”), and in public statements designed to cover for and/or falsely exonerate accused police officers; and (ii) encourage and, in the absence of video evidence blatantly exposing the officers’ perjury, fail to discipline officers for “testilying” and/or fabricating false evidence to initiate and continue the malicious prosecution of civilians in order to cover-up civil rights violations perpetrated by themselves or fellow officers, supervisors and/or subordinates against those civilians.

86. All of the foregoing acts by defendants deprived the plaintiff of federally protected rights, including, but limited to, the constitutional rights enumerated in paragraphs “62” through “73” above.



87. Defendant CITY knew or should have known that the acts alleged herein would deprive the plaintiff of his rights, in violation of the Fourth and Fourteenth Amendments to the United States Constitution.
88. Defendant CITY is directly liable and responsible for the acts of the individual police defendants because it repeatedly and knowingly failed to properly supervise, train, instruct, and discipline them and because it repeatedly and knowingly failed to enforce the rules and regulation of the CITY and NYPD, and to require compliance with the Constitution and laws of the United States.
89. Despite knowledge of such unlawful de facto policies, practices and/or customs, these supervisory and policy-making officers and officials of the NYPD and the CITY, including Commissioner KELLY, have not taken steps to terminate these policies, practices and/or customs, do not discipline individuals who engage in such policies, practices and/or customs, or otherwise properly train police officers with regard to the constitutional and statutory limits on the exercise of their authority, and instead sanction and ratify these policies, practices and/or customs through their active encouragement of, deliberate indifference to and/or reckless disregard of the effect of said policies, practices and/or customs upon the constitutional rights of persons in the City of New York.
90. The aforementioned CITY policies, practices and/or customs of failing to supervise, train, instruct and discipline police officers and encouraging their misconduct are evidenced by the police misconduct detailed herein. Specifically, pursuant to the aforementioned CITY policies, practices and/or customs, the individual defendants felt empowered to exercise unreasonable and wholly unprovoked force against plaintiff, arrest plaintiff without probable cause and then fabricate and swear to a false story to cover up their blatant violations of

plaintiff's constitutional rights. Pursuant to the aforementioned CITY policies, practices and/or customs, defendants failed to intervene in or report other defendants' violation of plaintiff's rights or subsequent perjury.

91. Plaintiff's injuries were a direct and proximate result of defendant CITY and the NYPD's wrongful de facto policies and/or well-settled and widespread customs and practices and of the knowing and repeated failure of the defendant CITY and the NYPD to properly supervise, train and discipline their police officers.
92. Defendants, collectively and individually, while acting under color of state law, acquiesced in a pattern of unconstitutional conduct by subordinate police officers and were directly responsible for the violation of the plaintiff's constitutional rights.

**FIFTH CLAIM  
RESPONDEAT SUPERIOR LIABILITY OF THE CITY OF NEW YORK  
FOR STATE LAW VIOLATIONS**

93. Plaintiff incorporates by reference the allegations set forth in all preceding paragraphs as if fully set forth herein.
94. The conduct of the individual defendants alleged herein, occurred while they were on duty and in uniform, and/or in and during the course and scope of their duties and functions as NYPD officers, and/or while they were acting as an agent and employee of defendant CITY, clothed with and/or invoking state power and/or authority, and, as a result, defendant CITY is liable to plaintiff pursuant to the state common law doctrine of respondeat superior.
95. As a result of the foregoing, plaintiff was deprived of his liberty, suffered specific and serious bodily injury, pain and suffering, psychological and emotional injury, costs and expenses, and was otherwise damaged and injured.

**SIXTH CLAIM**  
**VIOLATIONS OF THE NEW YORK STATE CONSTITUTION**

96. Plaintiff incorporates by reference the allegations set forth in all preceding paragraphs as if fully set forth herein.

97. Defendants' conduct alleged herein breached the protections guaranteed to plaintiffs by the New York State Constitution, Article I, §§ 8, 11, and 12, including the following rights: (a) freedom from unreasonable seizure of his person, including the excessive use of force; (b) freedom from arrest without probable cause; (c) freedom from false imprisonment, meaning wrongful detention without good faith, reasonable suspicion or legal justification, and of which plaintiff was aware and did not consent; (d) freedom from the lodging of false charges against him by police officers; (e) freedom from having police officers fabricate evidence against him; (f) freedom from malicious prosecution by police, that being prosecution without probable cause that is instituted with malice and that ultimately terminated in plaintiff's favor; (g) freedom from abuse of process; and (h) freedom from deprivation of liberty without due process of law.

98. Defendants' deprivation of plaintiffs' rights under the New York State Constitution resulted in the injuries and damages set forth above.

**SEVENTH CLAIM**  
**ASSAULT AND BATTERY**

99. Plaintiff incorporates by reference the allegations set forth in all preceding paragraphs as if fully set forth herein.

100. By the actions described above, defendants did inflict assault and battery upon plaintiff.

The acts and conduct of defendants were the direct and proximate cause of injury and

damage to plaintiff and violated his statutory and common law rights as guaranteed by the laws and Constitution of the State of New York.

101. As a result of the foregoing, plaintiff was deprived of his liberty, suffered specific and serious bodily injury, pain and suffering, psychological and emotional injury, costs and expenses, and was otherwise damaged and injured.

**EIGHTH CLAIM**  
**FALSE ARREST AND FALSE IMPRISONMENT**

102. Plaintiff incorporates by reference the allegations set forth in all preceding paragraphs as if fully set forth herein.

103. By the actions described above, defendants caused to be falsely arrested or falsely arrested plaintiff, without reasonable or probable cause, illegally and without a warrant, and without any right or authority to do so. The acts and conduct of the defendants were the direct and proximate cause of injury and damage to plaintiff and violated his statutory and common law rights as guaranteed by the laws and Constitution of the State of New York.

104. As a result of the foregoing, plaintiff was deprived of his liberty, suffered specific and serious bodily injury, pain and suffering, psychological and emotional injury, costs and expenses, and was otherwise damaged and injured.

**NINTH CLAIM**  
**ABUSE OF PROCESS**

105. Plaintiff incorporates by reference the allegations set forth in all preceding paragraphs as if fully set forth herein.

106. By the conduct and actions described above, defendants employed regularly issued process against plaintiff compelling the performance or forbearance of prescribed acts, namely, showing up to court repeatedly to defend himself against the baseless criminal

charges. The purpose of activating the process was intent to harm the plaintiff without economic or social excuse or justification, and the defendants were seeking a collateral advantage or corresponding detriment to the plaintiff, which was outside the legitimate ends of the process. The specific collateral advantage sought by defendants was to cover for their own conduct alleged herein and to make arrests in furtherance of the CITY's policy and practice of arrest quotas or "productivity goals." The acts and conduct of the defendants were the direct and proximate cause of injury and damage to the plaintiff and violated his statutory and common law rights as guaranteed by the laws and Constitution of the State of New York.

107. As a result of the foregoing, the plaintiff was deprived of his liberty, suffered specific and serious bodily injury, pain and suffering, psychological and emotional injury, costs and expenses, and was otherwise damaged and injured.

**TENTH CLAIM**  
**INTENTIONAL AND NEGLIGENT INFLECTION OF EMOTIONAL DISTRESS**

108. Plaintiff incorporates by reference the allegations set forth in all preceding paragraphs as if fully set forth herein.

109. By the actions described above, defendants engaged in extreme and outrageous conduct, which intentionally and/or negligently caused severe emotional distress to plaintiff. The acts and conduct of the defendants were the direct and proximate cause of injury and damage to the plaintiff and violated his statutory and common law rights as guaranteed by the laws and Constitution of the State of New York.

110. As a result of the foregoing, plaintiff was deprived of his liberty, suffered specific and serious bodily injury, pain and suffering, psychological and emotional injury, great humiliation, costs and expenses, and was otherwise damaged and injured.

**ELEVENTH CLAIM  
NEGLIGENCE**

111. Plaintiff incorporates by reference the allegations set forth in all preceding paragraphs as if fully set forth herein.
112. The defendants, jointly and severally, negligently caused injuries, emotional distress and damage to the plaintiff. The acts and conduct of the defendants were the direct and proximate cause of injury and damage to the plaintiff and violated his statutory and common law rights as guaranteed by the laws and Constitution of the State of New York.
113. As a result of the foregoing, plaintiff was deprived of their liberty, suffered specific and serious bodily injury, pain and suffering, psychological and emotional injury, costs and expenses, and was otherwise damaged and injured.

**TWELFTH CLAIM  
NEGLIGENT HIRING, SCREENING, RETENTION,  
SUPERVISION, AND TRAINING**

114. Plaintiff incorporates by reference the allegations set forth in all preceding paragraphs as if fully set forth herein.
115. Defendant CITY negligently hired, screened, retained, supervised, and trained defendants. The acts and conduct of the defendants were the direct and proximate cause of injury and damage to the plaintiff and violated his statutory and common law rights as guaranteed by the laws and Constitution of the State of New York.
116. As a result of the foregoing, plaintiff was deprived of his liberty, suffered specific and serious bodily injury, pain and suffering, psychological and emotional injury, costs and expenses, and was otherwise damaged and injured.

**THIRTEENTH CLAIM**  
**MALICIOUS PROSECUTION**

117. Plaintiff incorporates by reference the allegations set forth in all preceding paragraphs as if fully set forth herein.
118. By the actions described above, by the false allegations against the plaintiff in the accusatory instrument, the individual defendants caused a criminal proceeding to be initiated against plaintiff, even though there was no probable cause for an arrest or prosecution in this matter. The individual defendants maliciously caused this prosecution to be initiated in that they knew there was no probable cause for such prosecution and that they further wished to harm and punish plaintiff for illegitimate reasons. The criminal case against plaintiff was terminated in his favor in that all charges were dismissed in their entirety.
119. As a result of the foregoing, plaintiff was deprived of his liberty, suffered specific and serious bodily injury, pain and suffering, psychological and emotional injury, great humiliation, costs and expenses, and was otherwise damaged and injured.

**JURY DEMAND**

Plaintiff demands a trial by jury in this action on each and every one of his damage claims.

WHEREFORE, plaintiff demands judgment against the defendants individually and jointly and prays for relief as follows:

- a. That he be compensated for violation of his constitutional rights, pain, suffering, mental anguish, and humiliation; and
- b. That all records related records to, or created in reaction to or in the course of, plaintiff's arrest and prosecution be expunged from defendants' records and/or databases, however maintained;
- c. That he be awarded punitive damages against the individual defendants; and
- d. That he be compensated for attorneys' fees and the costs and disbursements of this action; and

- e. For such other further and different relief as to the Court may seem just and proper.

Dated: New York, New York  
September 9, 2011

Respectfully submitted,

/s/

By:

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